IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

chapter VIII, rule 32(2) (b)

Description of case

Date of decision: 28.06.2006

Criminal Appeal No. 595 of 2001

1. Balwant Singh S/o Narain Singh
2. Narian Singh S/o Ranjor Singh
   R/o Village Pariya
   P.S. Patwari Circle Kotgi ……..Appellants

Versus

State ……..Respondent

A.F.R. (Approved for Reporting)

Not approved for Reporting

(Initials of judges)

Date: 28.06.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the judge for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 595 of 2001
(Old No. 506 of 1989)

1. Balwant Singh S/o Narain Singh

2. Narain singh S/o Ranjor Singh
Residents of Village Pariya,
Police Station, Patwari Circle Kotgi Raika,
District Tehri Garhwal.

…….. Appellants

Versus

The State ……. Respondent

Ms. Rachana Joshi and Mr. Rajendra Dobhal, Advocates for the appellants.
Mr. D.K. Sharma, Government Advocate assisted by Mr. H.C. Pandey, Asstt. Government Advocate for the respondent State.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dated: June 28, 2006.

[Per Hon' ble Frafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 17.02.1989, passed in Sessions trial No. 16 of 1988, whereby the then learned Sessions Judge, Tehri Garhwal, has convicted both the appellants Balwant Singh and Narain Singh under Section 302 read with Section 34 and under Section 498-A of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentenced each one of

the convicts to imprisonment for life under Section 302/34 and rigorous imprisonment for one year under Section 498-A of the I.P.C., respectively.

2) We heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story in brief is that the accused / appellant Balwant Singh got married to Padma Devi (deceased), sister of P.W. 1., Bhagwan Singh (informant), in the month of December, 1985. Accused / appellant Narain Singh is father of accused/ appellant Balwant singh. After marriage, Padma Devi used to live in her husband's house. On 20.06.1987, i.e. about a week before the date of incident, Padam Devi went to her brother's house in Tehri as she was unwell. After, about five days, on 25.06.1987, accused/ appellant Balwant Singh came to Tehri and took his wife forcibly back to his house. In the intervening night of 28th – 29 of June, 1987, when Padama Devi was sleeping with he son in her husband's house in village Pariya, accused / appellant Balwant Singh and his father accused/ appellant Narain Singh strangulated her to death. On 29.06.1987, P.W. 1., Bhagwan Singh, brother of the deceased, when working in his fields, got information about the death of his sister. He rushed to village Pariya where he found his sister dead. On being asked about the incident accused/ appellants Balwant Singh and Narain Singh told him that Padma Devi had committed suicide. Immediately, P.W. 1, Bhagwan Singh went in search of Patwari to report the incident (In Uttaranchal hills, in certain rural areas, Revenue officers are given police powers). However, Patwari was not found in his office and Bhagwan Singh

(P.W.1) went to his superior i.e. supervisory Kanongo, and gave his First Information Report (Ext. A –1), on which supervisory Kanongo directed Patwari Kotgi to register the crime. P.W. 3., Vijai Ram Semwal, Patwari Kotgi, received the report on the very day i.e. 29.06.1987, at about 2:00 P.M., and registered the crime and prepared the check report (Ext. A –3) of the First Information Report. He made necessary entry in the general diary (extract of which is Ext. A –5). Vijai Ram Semwal (P.W. 3) Patwari proceeded from Kotgi for village Pariya and reached there on the very day, but by then it was already 8:00 P.M. Thereafter, he took into possession the dead body of Padma Devi on 30.06.1987, at about 7:00 A.M., and prepared the inquest report (Ext. A –6). The Investigating Officer (Patwari), also prepared the site plan (Ext. A –7). He also got prepared sketch of the dead body (Ext. A –8) and sent the dead body to District Headquarter Tehri for postmortem examination. The next day, i.e. on 01.07.1987, accused/ appellants were arrested. On 02.07.1987, at about 2:20 P.M., autopsy was conducted on the dead body of Padma Devi by P.W. 2, Dr. J.P. Chamoli, who prepared the postmortem examination report (Ext. A –2) and opined that Padma Devi had died of Asphyxia due to strangulation. Later on, the investigation was transferred to P.W. 4., Tota Singh Aswal, Naib Tehsildar, who recorded the statement of remaining witnesses, and on completion of the investigation, submitted charge sheet (Ext. A –9) before the Magistrate, against both the accused / appellants.

4) The concerned Magistrate after registering the charge sheet and after providing necessary copies, as required

under Section 207 of the Cr.P.C. to the accused persons, committed the case to the court of Sessions for trial. The learned Sessions Judge, after hearing the prosecution and the defence, framed charge of two heads against both the accused / appellants Balwant Singh and Narain Singh, one for the offence punishable under Section 302 read with Section 34 of the I.P.C. and the other for the offence punishable under Section 498-A of the I.P.C. Both the accused / appellants pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1, Bhagwan Singh, informant and brother of the deceased; P.W. 2, Dr. J.P. Chamoli, who conducted the autopsy on the dead body and prepared postmortem examination report (Ext. A –2); P.W. 3, Vijai Ram Semwal, Patwari, who registered the crime, prepared the check report, took the dead body into possession and prepared the inquest report, sent the dead body for postmortem examination and prepared the site plan; and P.W. 4, Tota Singh Aswal, Naib Tehsildar, who completed the investigation and submitted the charge sheet against the accused persons. The oral as well as documentary evidence was put to the accused persons under Section 313 of the Cr.P.C., in reply to which both the accused alleged evidence to be false. It is stated by the accused / appellants in reply to the evidence put to them under Section 313 of the Cr.P.C. that Padma Devi committed suicide due to her illness. The trial court, after hearing the arguments of prosecution and that of the defence, found both accused Balwant Singh and Narain Singh guilty of the charge of offence punishable under Section 302 read with Section 34 of the I.P.C. and that of offence punishable under Section 498-A of the I.P.C., and

after hearing both of them on sentence, sentenced each of them to imprisonment for life under Section 302/34 of the I.P.C. and rigorous imprisonment of one year under Section 498-A of the I.P.C. Aggrieved by said judgment and order dated 17.02.1989, both the convicts have preferred this appeal before the Allahabad High Court in the year 1989 from where it has been received by transfer under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention here, the ante mortem injures found by P.W. 2, Dr. J.P. Chamoli, at the time of conducting autopsy on the dead body of Padma Devi, aged 21 years, on 02.07.1987. Following ante mortem injuries were recorded by the Medical Officer on the person of Padma Devi, in the postmortem report (Ext.; A –2):

i) ***There are marks of the rope in both the wrists all around, and both legs above ankle joint. These marks were of chocolate brown colour and oozing of the same coloured blood was present.***

ii) ***Contusion on both the legs above ankle joint, brown black colour. On dissection, same coloured blood seen.***

iii) ***Ligature mark below the thyroid cartilage, round i.e. completely encircling whole neck, base is pale, reddish and margins of it are ecchymosed. There were abrasions and ecchymosis above and below these mark. No knot mark seen.***

iv) ***Multiple billae all over back and abdomen, some are collapsed.***

According to the Medical Officer, who conducted the postmortem examination, Padma Devi died of Asphyxia due to strangulation possibly on 28th – 29th of June, 1987. He also found that the injures caused to Padma Devi were sufficient in ordinary course of nature to cause her death.

6) From the prosecution story, it is clear that it is a case of circumstantial evidence, and there is no eye witness account of actual commission of murder by the appellants. Now, this Court has to examine whether the chain of circumstances established by the prosecution is such on the basis of which it can b e said that the murder of the deceased was committed by none other than the accused / appellants. The circumstances established are as under:

i) From the ante mortem injuries quoted above, and the opinion of P.W. 2, Dr. J.P. Chamoli, as recorded in the postmortem examination report (Ext. A –2), it is proved on the record that the death of Padma Devi is a homicidal death.

ii) It is also not disputed by the appellants that deceased was wife of appellant Balwant Singh, who was married to her about 1 ½ years, before the dated of incident.

iii) It is established by the prosecution and not disputed by the defence that homicidal death of Padma Devi has occurred in the intervening night of 28th – 29th of June, 1987, in the house of her husband i.e. Balwant Singh.

iv) The presence of appellant Balwant Singh in his house on the fateful day is also established and not disputed by the defence.

v) The appellants, under Section 313 of the Cr.P.C., in reply to the prosecution evidence put to them, has stated that Padma Devi committed suicide due to her illness, but no information relating to commission of suicide by the deceased appears to have been given by the appellants to the Police / Patwari having powers of police, or the superiors.

vi) Had there been only a ligature mark with some knot on the neck of the deceased, commission of suicide could be said to be probable, but there is no mark of knot found by the team of two doctors, who conducted the autopsy on the dead body.

vii) Apart from the ligature mark on the neck of the deceased, there are ante mortem injuries found on the wrists and the feet of the deceased of the rope, indicating complete encircling by rope of said parts.

7) As far as encircling injury over the wrists and feet is concerned, Ms. Rachana Joshi, learned counsel for the appellants argued that the dead body was taken from village Pariya to District Headquarter Tehri (to some distance on foot and thereafter on a vehicle,), as such, naturally the dead body must have been tied with some base so that it may not fall down. The explanation advanced by learned counsel for the appellants cannot be accepted for the reason that in that situation after dead body is sealed, the complete encircling marks would not be there. Rather, at the most there could be half circle mark and that too a postmortem injury, and not an ante mortem injury.

8) On behalf of the appellants it is also argued that the motive of commission of crime is not established by prosecution, as such, the prosecution story, as narrated against the appellants, cannot be believed. It is true, that in a case of circumstantial evidence, motive has its own importance in appreciation of the evidence on record. On going through the entire evidence on record, we are of the view, that it cannot be said that the motive has not been indicated by the prosecution. P.W. 1, Bhagwan Singh, brother of the deceased, who has lodged the first information report has stated in the examination that behavior of appellant Balwant Singh was cruel towards his wife Padma Devi (deceased). In this connection, he has stated on oath that a week before the incident, i.e. on 20th of June, 1987, when Padma Devi came to his house in Tehri for medical treatment of her illness, five days thereafter in that condition also, appellant Balwant Singh gave beating and forcibly took her back. Learned counsel for the appellants drew our attention to the cross examination of this witness and submitted that in para 6 of the cross examination he has not uttered a word that appellant Balwant Singh took his wife forcibly. On close scrutiny of the statement, we found that what has been asked by the learned counsel for the defence has been replied by the witness, as such, there was no occasion for the witness to repeat the same fact in the cross examination which he had earlier narrated in the examination-in-chief. Since, the death is homicidal and the defence has taken the plea that Padam Devi died suicidal death due to her illness, accused should have disclosed what kind of serious illness was that which compelled her to commit the suicide. On the other

hand, P.W. 1, Bhagwan Singh has stated that when Padma Devi came to Tehri for treatment, before her death, she was suffering only from dysentery ("KHOONI DAST').

9) Ms. Joshi, learned counsel for the appellants drew our attention to the principle of law laid down in ***Akhilesh Hajam Vs. State of Bihar reported in 1995 Supp (3) Supreme Court Cases 357 and Palvinder Kaur Vs. State of Punjab reported in A.I.R. 1952 Supreme Court 354,*** and it is argued that suspicion however strong cannot be made basis for conviction of the accused. We have gone through both the case laws. In the case of ***Akhilesh Hajam (supra),*** the Apex court has opined that emotional consideration cannot take the place of proof. In said case, as many as 12 witnesses were examined but they did not support prosecution case. The witnesses of fact were declared hostile in said case. It is not the case here. The conviction by the trial court was based in that case mainly on the adverse inference due to the reason that the accused who should have been present in his house had absconded after the crime. As such, the facts of Akhilesh Hajam's case are not similar to the present case nor does it help the present appellants. In *Palvinder Kaur's* case also the facts and circumstances were not identical or similar to this case.

10 The next submission on behalf of the appellants made before us, is that there is no evidence whatsoever on the record that the deceased was harassed for non-fulfillment of demand of dowry. On close scrutiny of the prosecution evidence, we found that the above submission has a force. In the First Information Report (Ext. A –1) there is not a single word if there was any demand of dowry or

harassment of the deceased for that reason, nor is it told by P.W. 1, Bhagwan Singh in his examination. The conviction under Section 498-A of the appellants, passed by the learned trial court is based on the surmises and not the evidence on record. Therefore, we do not find either of the appellants guilty of charge of offence punishable under Section 498-A of the I.P.C. the conviction and sentence passed under said Section is liable to be set aside.

11) Lastly, it is argued that appellant No. 2, Narain Singh is an innocent elderly member of the family, who has been roped in the crime only for the reason that he was member of the family of the husband of the deceased. On close examination of evidence on record, we do not find the argument without substance for following reasons, which create a reasonable doubt as to involvement of appellant No. 2, Narain Singh in the crime:

i) Unlike the appellant No. 1, Balwant Singh, regarding appellant No. 2, Narain Singh, it is nowhere mentioned in the First Information Report (Ext. A –1) that he assaulted or gave beating to the deceased at any point of time. As against appellant No. 1, Balwant Singh, it is mentioned in the First Information Report that on 25.06.1987, appellant Balwant Singh took his wife forcibly form the house of her brother and assaulted her on that day. The said fact in the First Information Report is proved by P.W. 1, Bhagwan Singh, There is no similar role assigned to appellant No. 2, Narain Singh, who is father-in-law of the deceased.

ii) As to the company of a woman in the midnight, a simple presumption can be drawn that the husband was with her and it is only the who can explain that how his wife has died, particularly, when the presence of the husband is not denied in the house on the day on incident. However, the same cannot be said about the father-in-law.

iii) In Vithal Tukaram More Vs. State of Maharashtra reported in (2002) 7 supreme Court Cases 20, the Apex court has observed as under:

"Mere presence of accused appellants in the house cannot reasonable lead to an inference of their joint participation in physical assault and common intention on their part with the convicted accused to commit her murder. The medical evidence showing that the death was not "suicidal" but "homicidal" also does not necessarily lead to the inference of involvement of all the accused in the homicidal death of the deceased."

12) For the reasons as discussed above, we are of the view that this appeal deserved to be allowed in respect of conviction and sentence passed under Section 498-A of the I.P.C., against the appellants. The appeal of appellant No. 2, Narain Singh deserves to be allowed, giving him benefit of doubt also in respect of offence punishable under Section 302 / 34 of the I.P.C. But the appeal of the appellant No. 1, Balwant Singh on the conviction recorded and sentence awarded under Section 302 of I.P.C. by the trial court is liable to be dismissed. Accordingly, the

appeal of appellant No. 2, Narain Singh is allowed. He is acquitted of the charge of offence punishable under Section 498-A and also of the one under Section 302 / 34 of the I.P.C. He is on bail. He need not to surrender. Appeal of appellant No. 1, Balwant Singh is allowed partly. He is acquitted of the charge of offence punishable under Section 498-A of the I.P.C But, his conviction under Section 302 of the I.P.C. and sentence of imprisonments for life, awarded there under is maintained. And, his appeal to that extent is dismissed. Appellant No. 1, Balwant Singh is on bail. His bail is cancelled. He (Balwant Singh) shall be taken into custody forthwith by the court concerned to make him serve out the sentence of imprisonment for life.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. June 28, 2006
H.Negi